IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1294 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CC PATEL EYE HOSPITAL - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MP SHAH for Petitioner(s) : 1,MS. KRUTI M SHAH for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR NILESH M SHAH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/09/2005

ORAL JUDGMENT

1. In the present petition the petitioner employer has challenged the ex-parte award dated 13/3/2002 passed at Labour Court, Vadodara as also an order dated 10/11/2003

passed by the same Court by which the application of the petitioner for setting aside ex-parte award was rejected.

2. The respondent no.2 herein the workman concerned had approached the Labour Court challenging his termination dated 25/3/1994 by raising Reference (LCV) No.707/95. This reference came to be decided ex-parte by the Labour Court by its award dated 13/3/2002. The Labour Court granted reinstatement and 30% back-wages to the workman. The petitioner filed an application seeking setting aside the ex-parte award on 24/9/2002. In the application the petitioner contended that the trustee of the petitioner one Shri Ratilal Chunilal Shah was looking after the case and other administration of the trust. Said Shri R.C.Shah met with an accident and was under coma for a long time. He eventually expired due to the injury received. On account of this unfortunate event the trust could not be represented before the Labour Court. An ex-parte award came to be passed. The Labour Court however turned down the application of the petitioner. The Labour Court did not accept the application of the petitioner observing that the death certificate of Shri R.C.Shah was not produced. It was also observed that it is not possible to believe that there would be no other

person who would be familiar with the case. It was observed that there was negligence on the part of the petitioner employer.

3. During the pendency of this petition respondent no.2 has been paid benefits under Section 17-B of the Industrial Disputes Act from the date of the award. While issuing notice this Court had also directed the petitioner to deposit an amount of Rs. 35,000/- and a additional amount of Rs. 5,000/- towards probable cost. The petitioner has deposited such amounts and is stated to be lying with the Registry. Considering with the above submissions, it is apparent that the award was passed without participation from the petitioner. An attempt was made to point out that the petitioner could not participate on account of serious injuries to one of the trustees who was looking after the affairs of the trust. The injury eventually resulted into the death of the trustee. Considering the situation, I find it appropriate that the petitioner be given one more opportunity to represent his case before the Labour Court. Such an opportunity however cannot be unconditional. The amount of Rs. 35,000/- deposited herein by the petitioner shall be paid to the workman

concerned. Such payment however, shall be subject to the final order that the Labour Court may pass upon the conclusion of the proceedings. Amount of Rs. 5,000/- ordered to be deposited by this Court towards probable cost shall be paid to respondent no. 2 workman.

4. In the result by allowing the petition, the impugned orders dated 13/3/2002 and 10/11/2003 are quashed and set aside. The proceedings are remanded to the Labour Court for fresh consideration and disposal in accordance with law. The Labour Court is requested to give priority consideration and attempt to conclude the same as expeditiously as possible and preferably within a period of four months from the date of receipt of a copy of this order. With these directions the petition is disposed of. Rule is made absolute accordingly. The registry shall arrange to pay the amount of Rs. 35,000/- plus 5,000/- to the workman concerned by an account payee cheque.

5. Direct Service is permitted.

(Akil Kureshi, J.)

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